HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

-

WRIT PETITION No:15757 OF 2007

Dated: 26.7.2007

-

Between:

B.S. Nageswara Rao

..Petitioners

And

1. The Government of A.P., rep., by its
   Principal Secretary, Home (Ser.II)
   Department, Secretariat, Hyderabad and others.

..Respondents.

-

-

-

-

-

-

-

-

-

-

-

-

-

-

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:15757 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed challenging the order of the Tribunal dated 23.8.2006 in O.A.No.1078 of 2003.

The petitioner is the applicant before the Tribunal. He filed the above O.A. seeking to declare that the punishment of reduction in time scale of pay by one stage for one year with cumulative effect and also treating the period of his suspension from 25.8.1995 to 17.9.1999 as not on duty as ordered in Proceedings C.No.45/PR/96, dated 18.4.2002 of the third respondent and as ordered in appeal by the 2nd respondent in L.Dis.No.565/Appeal-2/2—2, dated 15.07.2002 and also as confirmed by the 1st respondent in Government Memo No.36423/Ser.II/A2/2002, dated 3.12.2002, as illegal and arbitrary.

The tribunal having observed that the punishment has been imposed in accordance with the rules and there is no violation of principles of natural justice dismissed the O.A. Having aggrieved by the same, the present writ petition is filed.

Heard the learned Counsel for the petitioner as well as the learned Government Pleader for Services I and perused the material available on record.

The brief facts of the case are that while the applicant was working as Police Constable in Vijayawada City, he was sent on deputation to the Vigilance Cell of the Civil Supplies Department, Hyderabad and subsequently, on repatriation from the above Department to his parent department, he did not report to duty. While so, on 25.8.1995 at about 11.30 p.m., while he was waiting for a bus at Nellore Bus Stop, he was arrested by the Excise Inspector on the ground that the suit case, which contains IMF liquor and which was found at the bus stop, belongs to him. Hence, criminal proceedings as well as Departmental proceedings were initiated against him and he was placed under suspension. He was acquitted in the criminal

proceedings and in the disciplinary proceedings, the charge was held 'not proved'. However, the 2nd respondent having deferred with the findings of the enquiry officer issued notice to the applicant and thereafter, the final orders were passed by the 3rd respondent, under which he was awarded punishment of reduction of time scale of pay by one stage for one year with cumulative effect and the period of suspension from 25.8.1995 to 17.9.1999 is treated as 'not on duty' and the said proceedings were confirmed by the 1st respondent.

The learned Counsel for the petitioner contended that when the applicant was acquitted in Criminal proceedings and when the charge was held 'not proved' in disciplinary proceedings, the punishment awarded by the 3rd respondent is bad in law and apart from that, the Commissioner of Police, Vijayawada did not give any valid reason for deferring with the findings of the enquiry officer and that there is no such punishment in the rules as awarded in the present case and the tribunal has failed to consider all these aspects and therefore, the order of the tribunal is liable to be set aside.

It is an undisputed fact that the applicant was acquitted in the criminal case. In department proceedings, the enquiry officer held that the charge was not proved. However, the 3rd respondent recorded his own findings and gave an opportunity to the applicant for making a representation as required under the Rules and after considering the reply, he passed the final orders imposing punishment of Reduction in Time Scale of Pay by one stage for one year. The appeal was also rejected. The tribunal after an elaborate discussion, gave its findings. It is also pertinent to note that in the disciplinary proceedings the Courts will not interfere unless they are biased. In that view of the matter and in view of the findings of the Tribunal, We have no hesitation to concur with the findings of the Tribunal.

At this juncture, it is to be noted that the period of suspension was for four years. Having regard to the length of period of suspension

and the punishment awarded, we are inclined to modify the punishment as follows:

1) Reduction in time scale of pay by one stage for one year without cumulative effect.

2) The period of suspension from 25.8.1995 to 17.9.1999 shall be treated as a continuity of service for the purpose of calculating his pension only.

With the above modification, the writ petition is disposed of. No costs.

_____
Justice T. Meena Kumari

_____
Justice G. Chandaiah

Date: 26th July, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

-

-

-

-

-

-

-

-

-

-

-

-

WRIT PETITION No:15757 OF 2007

Dated: 26.7.2007

-